THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25420 of 1998

Date: 04.04.2007

Between:

Patelkhana Venkataratnam.

....Petitioner

And

District Collector, Visakhapatnam and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25420 of 1998

O R D E R:

The petitioners claim to be the legal heirs of late Bodasakurthy Suryakantham W/o. Venkata Subba Rao. They feel aggrieved by the proceedings issued by respondents 1 to 3, for taking possession of the land in Survey No.421 of Thutipala Village of Visakhapatnam District. The petitioners allege that on the strength of a communication, dated 13.08.1998, received from the Mandal Revenue Officer, Makavarpalem, the Village Officer is trying to dispossess them. The petitioners contend that an extent of Ac.11.14 cents of land in Survey No.421 was originally held by late Venkata Subba Rao and the said land is given to his wife Suryakantham towards maintenance. It is stated that an extent of 79 cents therefrom was acquired by the Government under the Land Acquisition Act and the compensation therefor was paid to Suryakantam. It is also alleged that the name of Suryakantham is entered in the revenue records as possessor and that she has been paying the land revenue, during her life time. The petitioners contend that Suryakantham executed a Will, bequeathing her land upon them and they contend that there is absolutely no

basis for the respondents 1 to 3 in trying to dispossess them.

On behalf of the respondents 1 to 3, a counter affidavit is filed. It is admitted that the land was held by late Venkata Subba Rao and that the name of Suryakantham is recorded as possessor and enjoyer of the land. It is stated that out of three sons of late Venkata Subba Rao, two of them, by name Brahmaji Rao and Satyanarayana, filed declarations under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act') and on being found as surplus holder, Brahmaji Rao surrendered possession of Ac.3.71 cents of land and that the present proceedings are in relation thereto.

The fourth respondent, claiming to be one of the grand sons of Venkata Subba Rao, got himself impleaded. According to him, his father, by name Suryanarayana, was allotted one-third share and on account of the pending of writ petition, he has not been given pattadar pass book.

Heard the learned counsel for the petitioners, the learned Government Pleader Revenue (General) and the learned counsel for the 4th respondent.

Respondents 1 to 3 attempted to take possession of an extent of Ac.3.71 cents of land in Survey No.421 of Thutipala Village. It is on the basis that Sri Brahmaji Rao, one of the sons of late Venkata Subba Rao, had surrendered it under the Act, as excess land. If the said Brahmaji Rao were to have been the absolute owner and in possession of that property, no exception can be taken to the action of the respondents 1 to 3, in trying to take possession thereof. Respondents 1 to 3 admitted in the counter affidavit that Suryakantham was shown as possessor and enjoyer of the entire extent of Ac.11.14 cents of land. The allegation of the petitioners, that compensation for 79 cents of land acquired therefrom was paid to Suryakantham, was not denied. The circumstances, under which Brahmaji Rao and Satyanarayana have filed declarations showing Ac.3.71 cents each in the said Survey Number are not known. When Suryakantham, wife of the original owner, Venkata Subba Rao, was shown to be in possession and enjoyment of entire extent of land, the declarations filed by Brahmaji Rao and Satyanarayana or the orders passed therein do not have any impact upon the rights of Suryakantham or the persons claiming through her.

Respondents 1 to 3 ought to have issued notices to Suryakantham during her lifetime or the persons claiming

through her, once their own records reveal that she is in possession of the entire land. Therefore, their action proposing to take possession of Ac.3.71 cents of land, in pursuance of the impugned orders, cannot be sustained.

The Writ Petition is, accordingly, allowed. It is held that the impugned proceedings cannot constitute the basis to take possession of the land in Survey No. 421 of Thutipala Village of Visakhapatnam District, from the petitioners. It is, however, made clear that it shall be open to the 4th respondent and other concerned parties to work out their remedies in a civil Court. There shall be no order as to costs.

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04.04.2007

Note: Issue C.C. in three days.

(B/o)

JSU